



# California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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## PROPOSED ACTION ON REGULATIONS

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### TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

#### CONFLICT OF INTEREST CODES

##### AMENDMENT

STATE AGENCY: California Energy Commission

A written comment period has been established commencing on **January 8, 2010** and closing on **February 22, 2010**. Written comments should be directed to the Fair Political Practices Commission, Attention Alexandra Castillo, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **February 22, 2010**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

#### COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

#### EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

#### AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

#### REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

#### CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Alexandra Castillo, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

#### AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respec-

tive agency. Requests for copies from the Commission should be made to Alexandra Castillo, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

## TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the "Commission,") under the authority vested in it by Section 83112 of the Government Code proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulations at a public hearing on or after **February 11, 2010**, at the offices of the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m. on February 9, 2010.**

### BACKGROUND/OVERVIEW

The Commission is considering changes to 2 Cal. Code of Regulations Section 18942 concerning the home hospitality exception to the rules regulating the giving of gifts and the repeal of Section 18630<sup>1</sup> concerning this exception, as applied to lobbyists.

The Political Reform Act, (the "Act,")<sup>2</sup> generally requires state and local public officials to report gifts aggregating to \$50 or more per year from a single source on their annual Statements of Economic Interests. Government Code Section 86203 prohibits lobbyists and lobbying firms from making gifts to state elected officers and specified state officials aggregating more than \$10 in a calendar month. In addition, Government Code Section 89503 and Regulation 18940.2 apply the Act's current \$420 annual gift limit on gifts from lobbyist employers and other donors to state elected officers and specified state officials.

Regulation 18630 was adopted in 1975 to clarify that the \$10 limit is not meant to inhibit all home entertainment by lobbyists. The regulation provides that when a lobbyist extends hospitality consisting of food, beverage or occasional lodging in his or her home, the hospitality does not constitute a gift unless other factors are present.<sup>3</sup>

<sup>1</sup> All Commission regulations are located in Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014.

<sup>3</sup> These factors include payment or reimbursement by the lobbyist's employer or lobbying firm for the cost of hospitality, an understanding between the lobbyist and his or her employer that a portion of the amount of compensation received by the lobbyist is to be used for hospitality and any person claiming the cost of the hospitality as a deductible business expense on any tax return.

### REGULATORY ACTION

#### Repeal 2 Cal. Code Regs. Section 18630 and amend 2 Cal. Code Regs. Section 18942:

The proposed repeal of Regulation 18630 and amendment of Regulation 18942 seek to merge the home hospitality regulation relating to lobbyists into the general rule governing the home hospitality exception. The proposed changes clarify the definition of "gift" and simplify the home hospitality exception by providing one set of rules for all gifts of home hospitality to an official, regardless of source. The proposed amendment of Regulation 18942 adds a proviso that the exception is not available if the host is reimbursed, directly or indirectly, by another person, or if the cost of the home hospitality is claimed as a business expense by anyone on a state or federal tax return. Finally, the amendment clarifies that for purposes of determining whether the proviso applies, the cost of home hospitality does not include any part of the value or rental of the home or any depreciation.

### SCOPE

The Commission may adopt or reject all or part of the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or related issues. The Commission may delete provisions, adopt the language noticed herein, or choose new language to implement its policy regarding the Act's definition of "gift" and the exception to the gift rules for home hospitality.

### FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

### AUTHORITY

Government Code Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act (Gov. Code Secs. 81000-91014).

### REFERENCE

The purpose of this regulation is to implement, interpret, and make specific Government Code Sections 82028, 86113, 86203 and 89503.

## CONTACT

Any inquiries should be made to Valentina Joyce, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/index.html?id=351>.

## TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, under the authority vested in it by section 83112 of the Government Code<sup>1</sup> proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations.<sup>2</sup> The Fair Political Practices Commission will consider the proposed regulations at a public hearing on or after **February 11, 2010**, at the offices of the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, California, at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **February 9, 2010**.

## BACKGROUND/OVERVIEW

The proposed amendments to Regulation 18942, subdivisions (a)(8) and (b) under the Political Reform Act (Government Code Sections 81000-91014) relate to the “gifts exchanged” exception. The changes are proposed to make the regulation consistent with the language under Section 89503(e)(2). The amendments eliminate the broad exception under Regulation 18942, subdivision (a)(8). Adhering to the statutory language in Section 89503(e)(2), “gifts exchanged” on birthdays, holidays or similar occasions would be considered gifts that are reportable on an official’s Statement of Economic Interests under the Political Reform Act but not subject to the Act’s gift limits.

## REGULATORY ACTION

The Commission will consider amending Regulation 18942 subdivision (a)(8) and subdivision (b), consistent with the exception under Section 89503(e)(2). These amendments would clarify that gifts exchanged on birthdays, holidays or similar occasions are reportable gifts (if \$50 or more) not subject to gift limits.

<sup>1</sup> All statutory references, including use of the word “Section,” are to the Government Code.

<sup>2</sup> All regulatory references, including the use of the word “Regulation,” are to regulations in Title 2, Division 6 of the California Code of Regulations.

The Commission may adopt the language noticed in these proposed regulations, or it may choose new language to implement its decisions concerning the issues identified above or related issues, including retaining a version of the current “gifts exchanged” exception in Regulation 18942 that is not as broad as the current exception but retains the exception for certain classes of persons.

## FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. These regulations will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. These regulations will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. These regulations will have no fiscal impact on the federal funding of any state program or entity.

## AUTHORITY

Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

## REFERENCE

The purpose of these regulations is to implement, interpret and make specific Government Code sections 82028, 87100, 87103, 87207, 87302 and 89503.

## CONTACT

Any inquiries should be made to Emelyn Rodriguez, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at [www.fppc.ca.gov](http://www.fppc.ca.gov).

## ADDITIONAL COMMENTS

After the hearing, the Commission may adopt or repeal the proposed regulations if they remain substantially the same as described or as in the text originally made available to the public. The Commission may make changes to the proposed regulations before their adoption or repeal.



## TITLE 2. STATE ALLOCATION BOARD

### NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD  
PROPOSES TO AMEND REGULATION  
SECTIONS 1859.96, 1859.148.2 AND 1859.166.2,  
TITLE 2. CALIFORNIA CODE OF  
REGULATIONS, RELATING  
TO LEROY F. GREENE SCHOOL  
FACILITIES ACT OF 1998

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced regulation sections contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

### AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend the above-referenced regulation sections under the authority provided by Sections 17070.35, 17075.15 and 17078.64 of the Education Code. The proposals interpret and make specific reference Sections 17070.35, 17072.30, 17072.32, 17074.16, 17076.10, 17078.25, 17078.52 and 17078.53 of the Education Code.

### INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law and filed with the Secretary of State on October 8, 1999.

The SAB, at its September 23, 2009 meeting, adopted emergency regulatory amendments to the SFP to extend

until January 1, 2011 the SAB's authority to find apportionments and preliminary apportionments "inactive" to help prevent them from expiring during the State's current fiscal crisis. The amendments represent a one-year extension of the SAB's authority to help protect school facility projects from expiring under three programs:

- New Construction/Modernization Program,
- Critically Overcrowded School Facilities Program (COS Program), and
- Charter School Facilities Program (CSFP).

This action responds to the Pooled Money Investment Board's temporary halt of disbursements for capital projects, including the construction of public schools, on December 17, 2008.

The SAB's authority to designate New Construction and Modernization apportionments as "inactive," with a sunset date of January 1, 2010, was initially approved by the OAL (OAL Emergency File Number 2009-0330-02E) and filed with the Secretary of State on April 9, 2009. Final approval was received from the OAL on November 3, 2009 (Certificate of Compliance File Number 2009-0924-04C) establishing these regulations as permanent regulations.

The SAB's authority to designate preliminary apportionments as "inactive" under the COS Program and the CSFP, with a sunset date of January 1, 2010, was initially approved by the OAL (OAL Emergency File Number 2009-0414-03E) and filed with the Secretary of State on April 22, 2009. Final approval was received from the OAL on November 9, 2009 (Certificate of Compliance File Number 2009-0929-03C) establishing these regulations as permanent regulations.

A summary of the proposed regulatory amendments follows:

Existing Regulation Section 1859.96 sets forth criteria for the suspension of the 18-month time limit for school districts to request the release of funds for SAB-approved apportionments, and states that it will become inoperative on January 1, 2010. The proposed amendment extends the sunset date to January 1, 2011.

Existing Regulation Section 1859.148.2 authorizes the SAB to determine a State fiscal emergency or crisis exists for the purpose of finding Preliminary Apportionments under the COS Program to be "Inactive," which suspends, as of December 17, 2008, the time period for an applicant to convert to a Final Apportionment. Once the SAB finds that State bond funds are available for the project, the balance of this time period to convert to a Final Apportionment resumes as it existed on December 17, 2008. This Section will become inoperative on January 1, 2010. The proposed amendment extends the sunset date to January 1, 2011.

Existing Regulation Section 1859.166.2 authorizes the SAB to determine a State fiscal emergency or crisis exists for the purpose of finding Preliminary Charter School Apportionments under the CSFP to be “Inactive,” which suspends, as of December 17, 2008, the time period for an applicant to convert to a Final Charter School Apportionment. Once the SAB finds that State bond funds are available for the project, the balance of this time period to convert to a Final Apportionment resumes as it existed on December 17, 2008. This Section will become inoperative on January 1, 2010. The proposed amendment extends the sunset date to January 1, 2011.

#### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulations.

#### ECONOMIC IMPACT

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact on businesses or private persons that might result from the proposed regulatory action and the following determinations have been made relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- There will be no impact in the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.

- There are no costs or savings to any State agency.
- The SAB has made an initial determination that there will be no impact on housing costs.

#### EFFECT ON SMALL BUSINESSES

It has been determined that the adoption of the regulation sections will not affect small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. These regulations only apply to school districts and charter schools for purposes of funding school facility projects.

#### SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OPSC no later than February 22, 2010, at 5:00 p.m. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Robert Young, Regulations  
Coordinator

Mailing Address: Office of Public School  
Construction  
1130 K Street, Suite 400  
Sacramento, CA 95814

E-mail Address: [robert.young@dgs.ca.gov](mailto:robert.young@dgs.ca.gov)

Fax No.: (916) 445-5526

#### AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Robert Young at (916) 445-0083. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Lisa Jones, Supervisor, Regulations Team, at (916) 322-1043.

#### ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulations substantially as

proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulation should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

#### **SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE**

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

#### **RULEMAKING FILE**

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in strikeout/underline.
2. A copy of this notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the OPSC during normal working hours. Items 1 through 3 are also available on the OPSC Internet Web site at: <http://www.opsc.dgs.ca.gov> under "Regulations," then click on "Proposed Regulations."

#### **ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no rea-

sonable alternative it considered or that has otherwise been identified and brought to the attention of the SAB would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the Web site listed above.

### **TITLE 2. STATE ALLOCATION BOARD**

#### **NOTICE OF PROPOSED REGULATORY ACTION**

#### **THE STATE ALLOCATION BOARD PROPOSES TO AMEND REGULATION SECTION 1859.76, TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998**

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend Regulation Section 1859.76, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the OPSC, at its own motion or at the instance of any interested person, may adopt the proposal substantially as set forth above without further notice.

#### **AUTHORITY AND REFERENCE CITATIONS**

The SAB is proposing to amend the above-referenced regulation section under the authority provided by Section 17070.35 of the Education Code. The proposal interprets and makes reference to Sections 17070.35, 17072.12 and 17072.35 of the Education Code.



## INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on October 8, 1999.

The SAB adopted the additional grant for general site development costs at its June 28, 2006 meeting, which was approved by the OAL and filed with the Secretary of State on September 5, 2006. This additional grant helps school districts cover the extra costs for items such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields. Districts may be eligible for the additional grant when building new schools and for additions to existing school sites where additional acreage is acquired.

As first implemented, the additional grant for general site development costs was to be suspended “no later than January 1, 2008” unless extended by the SAB. The SAB, at its December 12, 2007 meeting, extended the suspension date to “no later than January 1, 2009,” which was approved by the OAL and filed with the Secretary of State on July 10, 2008. The SAB, at its February 25, 2009 meeting, approved extending the suspension date to “no later than January 1, 2010,” which was approved by the OAL and filed with the Secretary of State on September 18, 2009. Most recently the SAB, at its November 4, 2009 meeting, approved extending the suspension date to “no later than January 1, 2011.”

The proposed amendment to one SFP regulation section is as follows:

Existing Regulation Section 1859.76 provides new construction additional grants for specific types and amounts of site development costs. It provides that the additional grant for general site development costs shall be suspended “no later than January 1, 2010” unless extended by the SAB. The proposed amendment extends the suspension of the additional grant for general site development costs until “no later than January 1, 2011.”

### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulation does not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Di-

vision 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulation.

### ECONOMIC IMPACT

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact on businesses or private persons that might result from the proposed regulatory action and the following determinations have been made relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- There will be no impact in the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- There are no costs or savings to any State agency.
- The SAB has made an initial determination that there will be no impact on housing costs.

### EFFECT ON SMALL BUSINESSES

It has been determined that the adoption of the regulation section will not affect small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. This regulation only applies to school districts for purposes of funding school facility projects.

### SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OPSC no later than February 22, 2010, at 5:00 p.m. The express terms of the proposed regulation as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Robert Young, Regulations  
Coordinator

Mailing Address: Office of Public School  
Construction  
1130 K Street, Suite 400  
Sacramento, CA 95814

E-mail Address: [robert.young@dgs.ca.gov](mailto:robert.young@dgs.ca.gov)

Fax No.: (916) 445-5526

#### AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Robert Young at (916) 445-0083. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Lisa Jones, Supervisor, Regulations Team, at (916) 322-1043.

#### ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulation substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulation.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulation should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulation during the 15-day period.

#### SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulation with modifications not sufficiently related to the original text, the modified text will not be

adopted without complying anew with the notice requirements of the Administrative Procedure Act.

#### RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~/underline.
2. A copy of this notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the OPSC during normal working hours. Items 1 through 3 are also available on the OPSC Internet Web site at: <http://www.opsc.dgs.ca.gov> under "Regulations," then click on "Proposed Regulations."

#### ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SAB would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the Web site listed above.

### **TITLE 2. STATE ALLOCATION BOARD**

#### NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD  
PROPOSES TO AMEND REGULATION  
SECTION 1859.2, TITLE 2, CALIFORNIA CODE  
OF REGULATIONS, RELATING TO LEROY F.  
GREENE SCHOOL FACILITIES ACT OF 1998

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-

referenced regulation section contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

## AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend the above-referenced regulation section under the authority provided by Section 17070.35 of the Education Code. The proposals interpret and make specific reference Section 17075.10 of the Education Code.

## INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on October 8, 1999.

The Seismic Mitigation Program was established by Assembly Bill 127, Chapter 35, Statutes of 2006 (Perata/Nunez), which became law on May 20, 2006, and was funded in the amount of \$199.5 million for the seismic repair, reconstruction, or replacement of the "most vulnerable Category 2" school facilities by Proposition 1D approved by the voters at the November 7, 2006 General Election. The SAB adopted regulations to implement the Program, which were approved by the OAL and filed with the Secretary of State on April 30, 2008.

The SAB, at its meeting on August 26, 2009, adopted proposed emergency regulatory amendments to add four additional building component types to the definition of "Most Vulnerable Category 2" school buildings for the purpose of eligibility for the Seismic Mitigation Program. In addition, the SAB reduced the ground

shaking criteria for project eligibility from "1.70 g" to "1.68 g."

The amendments increase the estimated number of potentially eligible school facilities from 25 to 48 which will be eligible for Seismic Mitigation Program funding, and enable approximately \$167.2 million in seismic mitigation projects to qualify for the \$199.5 million in authorized funding.

A summary of the proposed regulatory changes follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments change the definition of "Most Vulnerable Category 2 Buildings" by reducing the ground shaking threshold (short period spectral acceleration) for program eligibility from 1.70 g to 1.68 g, and by adding four more building component types as eligible for funding:

- C1B... Reinforced Concrete Cantilever Columns with Wood Roofs,
- PC1... Precast/Tilt-up Concrete Shear Wall with Concrete Floor and Roof Diaphragms,
- PC2A... Precast Concrete Frame without Concrete Shear Walls and with Rigid Floor and Roof Diaphragms, and
- C3A... Concrete Frame with Infill Masonry Shear Walls and Flexible Floor and Roof Diaphragms.

## IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulation does not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulation.

## ECONOMIC IMPACT

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact on businesses or private persons that might result from the proposed regulatory action and the following determinations have been made relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

- There will be no impact in the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- There are no costs or savings to any State agency.
- The SAB has made an initial determination that there will be no impact on housing costs.

#### EFFECT ON SMALL BUSINESSES

It has been determined that the adoption of the regulation section will not affect small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. This regulation only applies to school districts for purposes of funding school facility projects.

#### SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OPSC no later than February 22, 2010, at 5:00 p.m. The express terms of the proposed regulation as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Robert Young, Regulations  
Coordinator

Mailing Address: Office of Public School  
Construction  
1130 K Street, Suite 400  
Sacramento, CA 95814

E-mail Address: [robert.young@dgs.ca.gov](mailto:robert.young@dgs.ca.gov)

Fax No.: (916) 445-5526

#### AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Robert Young at (916) 445-0083. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Lisa Jones, Supervisor, Regulations Team, at (916) 322-1043.

#### ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulation substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulation.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulation should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulation during the 15-day period.

#### SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulation with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.



## RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulation for which the adoption is proposed in strikeout/underline.
2. A copy of this notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the OPSC during normal working hours. Items 1 through 3 are also available on the OPSC Internet Web site at: <http://www.opsc.dgs.ca.gov> under "Regulations," then click on "Proposed Regulations."

## ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SAB would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the Web site listed above.

## TITLE 2. STATE PERSONNEL BOARD

### NOTICE OF PROPOSED CHANGES TO TITLE 2, OF THE CALIFORNIA CODE OF REGULATIONS, DIVISION 1, CHAPTER 1, ARTICLE 4, HEARINGS AND APPEALS, BY THE STATE PERSONNEL BOARD

## NATURE OF PROCEEDING

NOTICE IS HEREBY GIVEN that the State Personnel Board (Board) is proposing to take the action described in the Informative Digest.

A public hearing regarding this proposal will be held on February 23, 2010, at 9:00 a.m. in Room 150, at 801 Capitol Mall, Sacramento, CA.

Following the public hearing, the Board may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be made available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposal.

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95814  
Attention: John D. Smith

Comments may also be submitted by e-mail to: [jsmith@spb.ca.gov](mailto:jsmith@spb.ca.gov). Comments must be submitted no later than 5:00 p.m. on February 23, 2010.

## AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 18211, 18214, 18675 and 18701 of the Government Code, and to implement, interpret or make specific the following sections, the State Personnel Board is considering changes to Article 4, Hearings and Appeals, of Division 1 of Title 2 of the California Code of Regulations as set forth in the Informative Digest:

Code of Civil Procedure Sections: 2016, 87160–87164, 89538, 89541.

Government Code Sections: 8547–8547.12, 8575, 11425.40, 11430.10, 11430.30, 11430.40, 11430.50, 11430.60, 11435.05, 11435.10, 11435.20, 11435.25, 11440.20, 11445.10, 11445.60, 11511, 11511.5, 11511.7, 11512, 11514, 11515, 12940, 18670, 18671, 18671.1, 18672, 18672.1, 18673, 18675, 18701, 18952, 19058, 19083, 19100.5, 19173, 19230, 19231, 19243.4, 19253.5, 19572, 19574, 19575, 19575.5, 19576, 19583.5, 19585, 19590, 19683, 19700–19706, 19800–19810, 19889.2, 68097.1, 68097.2.

Education Code Sections: 87164, 89539, 89541, 89542.

Evidence Code Sections: 225, 250, 754, 915.

Penal Code Section: 6129.

Welfare & Institutions Code Section: 4512.

## SECTIONS AFFECTED

Amendments to sections: 51, 51.1, 51.2, 51.4, 51.5, 51.9, 52.1, 52.2, 52.3, 52.5, 52.6, 53.1, 56, 56.1, 56.2, 56.3, 56.4, 56.5, 56.6, 56.7, 57.2, 57.3.

Adoption of sections: 51.3, 52.1, 52.2, 52.3, 52.5, 52.8, 52.10, 53.1, 53.2, 53.3, 53.4, 54.1, 55.1, 56.1, 56.2, 56.3, 56.4, 57.1, 57.2, 58.1, 58.2, 58.6, 58.7, 58.8, 58.9, 58.10, 58.11, 59.2, 59.3, 59.4, 60.1, 63.1, 64.1, 64.2, 64.3, 64.4, 64.5, 64.6.

Repealed sections: 51.3, 52, 52.4, 53, 53.2, 54, 54.2, 56.8, 57.4, 60, 60.1, 60.2, 60.3, 60.4, 60.5, 60.6, 60.7, 60.8, 60.9, 60.10, 65, 547, 547.1.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The State Personnel Board (Board) is a neutral body responsible for administering a merit system of civil service employment within California State Government. As part of its responsibility, the Board conducts hearings and appeals to resolve alleged violations of civil service laws and rules. Such hearings and appeals are for the most part, conducted by the Appeals Division of the Board. Many of these appeals are heard by an Administrative Law Judge (ALJ), while certain merit appeals are heard by a Hearing Officer. Finally, designated merit appeals and lesser adverse actions under Government Code section 19576, may be investigated, with or without a hearing.

Government Code section 18701 provides the Board with broad authority to “prescribe, amend, and repeal rules in accordance with law for the administration and enforcement of this part and other sections of this code over which the board is specifically assigned jurisdiction.”

Existing regulations that set forth the procedures for submission of appeals and complaints, and for conducting hearings and appellate procedures are incomplete, confusing, and do not reflect a comprehensive regulatory scheme. By this rulemaking, the Board has undertaken a complete review of all hearings and appeals regulations in order to provide clear explanations of the different legal processes that reflect current practice, and to ensure the Appeals Division procedures function in a more orderly and expeditious manner. The scope and organization of the regulations have been modeled after what one would expect to see in local rules of a superior court.

In this rulemaking, existing and new regulations have been reorganized and separated into sub-articles that provide a road map for everyone involved in a complaint or appeal process before the Board. The individual articles are: Sub-article 1, General Provisions, which covers the scope of the article and definitions; Sub-article 2, Filing with SPB, covers such subjects as filing and delivery requirements, requests to file charges, pleadings, right to representation, and proof of service; Sub-article 3, Assignment of Appeals or Complaints,

details the assignment of different types of appeals or complaints to either the informal hearing process, the investigative process, or the evidentiary hearing process; Sub-article 4, Informal Hearing Process, outlines the conduct of informal hearings; Sub-article 5, Investigative Process, discusses investigative reviews and investigatory hearings.

Sub-article 6, Evidentiary Hearing Process, is broken down into five chapters: Chapter 1, Administrative Law Judges, discusses the authority of ALJ's, peremptory strike, disqualification, and ex parte communications. Chapter 2, Prehearing Provisions, discusses prehearing/settlement conference, and consolidated versus separate proceedings; Chapter 3, Hearings, covers such subjects as witnesses, electronic proceedings, accommodation, interpreters, and notice of settlement; Chapter 4, Discovery, covers requests for discovery, depositions, subpoenas, and abuse of the discovery process; and Chapter 5, Law and Motion, covers the types of motions that will be heard, hearing continuances, and motions to compel discovery.

Sub-article 7 Name-Clearing Hearings, discusses the procedures used in name-clearing hearings; Sub-article 8, Discrimination Complaint Process; covers discrimination, harassment, retaliation, as well as denial of reasonable accommodation. This article discusses filing discrimination complaints, appointing power discrimination complaint process, as well as the filing requirements for filing discrimination complaints with the Board.

Sub-article 9, Merit issue Complaints, defines what is a merit issue complaint, and how they are dealt with by the Appeals Division; and Sub-article 10, Whistleblower Retaliation Complaint Process; sets forth filing requirements, the types of cases that are referred to either investigation or informal hearings, disciplinary actions for proven retaliatory acts, as well as consolidation with other cases.

The Board has also included 2 appendixes with this rulemaking. Appendix A, is the 2009 California Rules of Court, that covers accommodations by persons with disabilities that is referred to in the regulation covering reasonable accommodation. Appendix B is a subpoena form that covers both subpoenas and subpoenas duces tecum which the Board is mandating in order to have a consistent form which is easily understood by those issuing subpoenas as well as to those being subpoenaed.

With the exception of the State Employee Mediation Program regulations which are being repealed as a result of a lack of funding, the remaining regulations that are being repealed are either obsolete, confusing, or their subject matter has been included in new regulations.

In addition, some obsolete text is deleted, and some minor, non-substantive changes have been made.

## LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts.

## FISCAL IMPACT ESTIMATES

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary cost or savings on local agencies. This proposal does not result in any cost or savings in federal funding to the state.

## COSTS OR SAVINGS TO STATE AGENCIES

No additional costs or savings to state agencies are anticipated.

## BUSINESS IMPACT/SMALL BUSINESSES

The State Personnel Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses as defined by section 11342.610. The determination that the proposal would not affect small business is based upon the fact that the proposal applies only to the procedures followed by state agencies, employees of state agencies, and their representatives, if any, in the hearings of appeals before the State Personnel Board.

## ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES

The State Personnel Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

## COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The State Personnel Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## EFFECT ON HOUSING COSTS

None.

## ALTERNATIVES

The State Personnel Board must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the agency's attention, would be more effective in carrying out the purpose for which the adoption of these regulations are proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

## CONTACT PERSONS

Inquiries concerning the proposed adoption of these regulations and written comments may be directed to: John D. Smith, [jsmith@spb.ca.gov](mailto:jsmith@spb.ca.gov), (916) 651-1041, or Kathy Norton, (916) 651-3899.

## INITIAL STATEMENT OF REASONS AND INFORMATION

The State Personnel Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

## TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons and all of the information upon which the proposal is based, may be obtained upon request from the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. These documents may also be viewed and downloaded from the State Personnel Board's website under "What's New?" at: [spb.ca.gov](http://spb.ca.gov).

## AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person(s) named above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named above.

## WEBSITE ACCESS

Materials regarding this proposal can be found at the State Personnel Board's website under "What's New?" at: [spb.ca.gov](http://spb.ca.gov).

**TITLE 10. MANAGED RISK MEDICAL  
INSURANCE BOARD**

**NOTICE OF PROPOSED RULEMAKING  
ER-02-09**

**TITLE 10: CALIFORNIA CODE  
OF REGULATIONS  
CHAPTER 5.5 MAJOR RISK MEDICAL  
INSURANCE PROGRAM**

**AMEND SECTIONS 2698.600,  
2698.602 AND 2698.604**

**NATURE OF PROCEEDING**

NOTICE IS HEREBY GIVEN that the Managed Risk Medical Insurance Board (MRMIB) is proposing to take the action described in the Informative Digest.

A public hearing regarding this proposal will be held on February 23, 2010, at 1:30 p.m., at 1000 G Street, Suite 450, Sacramento, CA 95814.

Following the public hearing MRMIB may thereafter adopt the proposal substantially as described below or may modify the proposal if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposal.

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the:

Managed Risk Medical Insurance Board  
Attn: Dianne Knox (ER-2-09)  
1000 G Street, Suite 450  
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at (916) 445-0898 or by e-mail to [dknox@mrrib.ca.gov](mailto:dknox@mrrib.ca.gov). Comments must be received no later than 5:00 p.m. on February 23, 2010.

**AUTHORITY AND REFERENCE**

Authority: Section 1373.62, Health and Safety Code; Sections 10127.15, 12711 and 12712, Insurance Code.

Reference: Sections 1373.62 and 1373.622, Health and Safety Code; Sections 10127.15, 12711 and 12712, Insurance Code.

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**

In 2002, the Legislature passed and the Governor signed AB 1401 (Chapter 794, Statutes of 2002). AB 1401 created a four-year pilot (the Guaranteed Issue Pilot Program, or GIP) intended to bring additional funds into the Major Risk Medical Insurance Program (MRMIP). In MRMIP, the state bears most or all of the losses for health care not covered by subscriber premiums. Pursuant to AB 1401, MRMIB was required to disenroll MRMIP subscribers after 36 consecutive months. (Insurance Code sec. 12725(f).) Disenrolled individuals instead had access to coverage in the private market: Every individual market health care service plan and health insurer was required to sell them a "standard benefit plan" that paralleled MRMIP coverage with a slightly higher annual benefit limit. GIP premiums were, by law, 110% of MRMIP premiums.

The GIP pilot brought additional funds into MRMIP because, pursuant to the statute, MRMIB and GIP plans split the aggregate losses equally rather than having MRMIB bear most of the losses as it does in MRMIP. (Health & Safety Code sec. 1373.62 and Insurance Code sec. 10127.5, as enacted in Chapter 794, Statutes of 2002, and amended by Chapter 683, Statutes of 2006.) The statutory requirement that MRMIP disenroll subscribers after 36 months expired January 1, 2008. The statutory provision requiring guaranteed issue of GIP products and related provisions on the division of costs between GIP plans and MRMIP were repealed as of January 1, 2008. (See Health & Safety Code sec. 1373.62(j) and Insurance Code sec. 10127.5(j), now repealed.) However, plans must continue covering existing GIP subscribers and the rules concerning plan reconciliations and division of costs continue to apply. (See, e.g., Health & Safety Code sec. 1372.622, and Insurance Code sec. 10127.16.)

The GIP statute provided for an annual, calendar-year-based reconciliation of health plans' GIP expenditures according to a formula. The statutory formula required MRMIB to pay GIP plans one half of their aggregate calendar year "*health care services*" expenditures not covered by premiums (Health & Safety Code sec. 1373.62(h)(1) and Insurance Code sec. 10127.5(h)(1).) The term "*health care services*" in turn was defined to mean plans' expenditures for health claims *plus* a monthly administrative fee equal to the average monthly administrative fee paid to plans in MRMIP. (Health & Safety Code sec. 1373.62(g)(2) and Insurance Code sec. 10127.5(g)(2).)



The statute, therefore, required that, through the GIP reconciliation process, MRMIB annually would pay plans one half of the following amount: aggregate annual health claims *plus* monthly administrative fee *minus* aggregate premiums. However, through an error, the MRMIB regulations implementing the GIP pilot provided that MRMIB would pay GIP plans the following: (1) one half the difference between aggregate health claims paid and premiums *and* (2) the *full* monthly administrative fee. The difference between the two formulas is that the statutory formula in essence pays the GIP plans *one-half* the MRMIP monthly administrative fee whereas the formula in the regulations pays GIP plans the *full* administrative fee.

In 2008 through 2009, based on reconciliation data submitted by the GIP health plans in arrears, MRMIB completed the first round of annual reconciliations, for Calendar Years 2003 through 2006, with these plans. In the course of conducting these reconciliations, MRMIB discovered the error, described above, in the regulations. For the largest GIP health plan, this represents a difference of approximately \$1.8 million for the 2003–2006 calendar years. The GIP plan reconciliations are conducted in arrears on an annual basis and will continue into the future. The next plan filings related to annual reconciliations will be due December 31, 2009. Because of the clear and unambiguous conflict between the GIP statute and the GIP regulations, the statute governs. However, MRMIB is changing the regulations to ensure that the regulations conform to the statute.

On November 23, 2009, MRMIB submitted to the Office of Administrative Law (OAL) the request for the emergency approval of the proposed regulations. The emergency regulations were effective December 2, 2009.

#### LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts.

#### FISCAL IMPACT ESTIMATES

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary cost or savings on local agencies.

#### COSTS OR SAVINGS TO STATE AGENCIES

There is no fiscal impact. This proposal would correct discrepancies between statute and the regulations.

#### COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE

None.

#### BUSINESS IMPACT/SMALL BUSINESS

The MRMIB has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses as defined by Section 11342.610. The determination that the proposal would not affect small business is based upon the fact that the proposal only corrects discrepancies between statute and the regulations.

#### ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES

The MRMIB has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

#### COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### EFFECT ON HOUSING COSTS

None.

#### ALTERNATIVES

The MRMIB must determine that no reasonable alternative considered by the agency, or that has been otherwise identified and brought to the agency's attention, would be more effective in carrying out the purpose for which the adoption of this regulation is proposed.

#### CONTACT PERSONS

Inquiries concerning the proposed adoption of this regulation and written comments may be directed to:

Dianne Knox  
Managed Risk Medical Insurance Board  
1000 G Street, Suite 450  
Sacramento, CA 95814  
(916) 324-0592

or

Randi Turner  
Managed Risk Medical Insurance Board  
1000 G Street, Suite 450  
Sacramento, CA 95814  
(916) 327-8243

#### INITIAL STATEMENT OF REASONS

The MRMIB has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

#### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which this proposal is based, may be obtained upon request from the Managed Risk Medical Insurance Board at 1000 G Street, Suite 450, Sacramento, CA 95814. These documents may also be viewed and downloaded from the MRMIB website at [www.mrmib.ca.gov](http://www.mrmib.ca.gov).

#### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named above.

You may obtain a copy of the final statement of reasons once it has been prepared by making a written request to the contact person named above.

#### WEBSITE ACCESS

Materials regarding this proposal can be found at [www.mrmib.ca.gov](http://www.mrmib.ca.gov).

### **TITLE 13. CALIFORNIA AIR RESOURCES BOARD**

#### **NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO NEW PASSENGER MOTOR VEHICLE GREENHOUSE GAS EMISSION STANDARDS FOR MODEL YEARS 2012-2016 TO PERMIT COMPLIANCE BASED ON FEDERAL GREENHOUSE GAS EMISSION STANDARDS**

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below

to consider proposed amendments to California's greenhouse gas emission standards that the Board approved in September 2004 pursuant to Assembly Bill 1493 (Pavley) (Stats. 2002, ch. 200.). These standards apply on a fleetwide basis to large-volume manufacturers of 2009 through 2016 model year new passenger motor vehicles certified for sale in California. The proposed amendments would allow manufacturer compliance with United States Environmental Protection Agency (U.S. EPA) standards to be deemed as compliant with California's standards for the 2012 through 2016 model years.

DATE: February 25, 2010

TIME: 9:00 a.m.

PLACE: California Environmental Protection  
Agency  
Air Resources Board  
Byron Sher Auditorium  
1001 I Street  
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., February 25, 2010, and may continue at 8:30 a.m., on February 26, 2010. This item may not be considered until February 26, 2010. Please consult the agenda for the meeting, which will be available at least 10 days before February 25, 2010, to determine the day on which this item will be considered.

#### INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

**Sections Affected:** Proposed amendments to California Code of Regulations (CCR), title 13, sections 1961 and 1961.1, and to the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" incorporated by reference in CCR, title 13, section 1961(d) (as last amended May 2, 2008). Note: There are three other pending ARB rulemakings that also amend the incorporated test procedures; the text proposed with this notice identifies these other pending amendments.

#### **Background:**

Citing compelling and extraordinary air quality and other impacts California faces from global warming, in 2002 the Legislature passed and the Governor signed Assembly Bill (AB) 1493. This bill required ARB to develop and adopt regulations to achieve the maximum feasible and cost-effective reduction of heat-trapping greenhouse gas emissions from passenger motor vehicles, beginning with the 2009 model year. The Board approved those regulations at its September 2004 hearing, and they were adopted in their final form in August 2005.

The AB 1493 regulations set separate greenhouse gas emission levels for both passenger cars and light-duty trucks (PC/LDT1) and heavier light-duty trucks and medium-duty passenger vehicles (LDT2/MDPV). The standards are effective beginning in the 2009 model year and become more stringent each year through 2016. The levels are measured in grams per mile of carbon dioxide-equivalent emissions, targeting carbon dioxide (CO<sub>2</sub>) as the main greenhouse pollutant and other greenhouse gases including refrigerants used in automotive air conditioners. Compliance is determined on a fleetwide basis, meaning that while each individual model can be above or below the standard, the average of a manufacturers' fleet must meet the standard or else the manufacturer incurs debits that must be equalized within five model years. Manufacturers can also accrue and trade credits between their PC/LDT1 and LDT2/MDPV segments, bank credits from over compliance for use in later model years, and trade credits with other manufacturers. Manufacturers may also obtain additional credit for selling vehicles fueled by other than conventional gasoline or diesel and demonstrating use of that fuel.

The greenhouse gas emission reductions to be achieved by the Pavley regulations are substantial. By 2016, the regulations require a 30% reduction in greenhouse gas emissions compared to 2009 model year vehicles. The AB 1493 regulations provide about 27.7 million metric tons in greenhouse gas reductions, or about 16% of the 174 million metric ton CO<sub>2</sub>-equivalent reductions needed to meet 1990 levels by 2020. They are the single largest emission reduction measure identified in the Scoping Plan adopted by the Board in December 2008 to chart ARB's course toward meeting AB 32, the Global Warming Solutions Act of 2006 (Stats. 2006, ch. 488).

Since Board approval in 2004, motor vehicle manufacturers and their trade associations have challenged the regulations in numerous federal and State court proceedings and have opposed California's request for an U.S. EPA waiver of preemption under the federal Clean Air Act to allow California to enforce its adopted standards. On May 19, 2009, challenging parties, individual automakers, California, and the federal government committed to a series of actions that would resolve these current and potential future disputes over the California standards through model year 2016. A summary of those actions is contained in a document published in the Federal Register at 74 Fed. Reg. 24007 (May 22, 2009) and in commitment letters by California and other parties that are available at [www.epa.gov/otaq/climate/regulations.htm](http://www.epa.gov/otaq/climate/regulations.htm). On June 30, 2009, U.S. EPA granted California's waiver request for all model

years 2009 through 2016. 74 Fed. Reg. 32744 (July 8, 2009).

For its part, California committed to: (1) revise its standards to allow manufacturers to demonstrate compliance with the fleet average greenhouse gas emission standard by "pooling" California and Section 177 State vehicle sales; (2) revise its standards for the 2012 through 2016 model year vehicles such that compliance with U.S. EPA-adopted greenhouse gas standards would serve as compliance with California's standards; and (3) revise its standards as necessary to allow manufacturers to use emission data from the federal Corporate Average Fuel Economy (CAFE) program to demonstrate compliance with the Pavley regulations. Regulatory changes that implement the first and third commitments made by California as part of our May 2009 commitment letter were approved by the Board at a public hearing on September 24, 2009. The current proposed amendments to California's passenger motor vehicle regulations implement our second commitment.

It is important to note that U.S. EPA has not yet issued a final rule for the 2012 through 2016 model year passenger vehicles. Consequently, these amendments are being proposed based on staff's understanding of the September 28, 2009, Notice of Proposed Rulemaking (NPRM) for a joint rulemaking by U.S. EPA and the federal Department of Transportation that proposes a coordinated federal greenhouse gas and fuel economy program for light-duty vehicles, referred to as the National Program. 74 Fed. Reg. 49454 (September 28, 2009). This national rule is expected to be finalized by the end of March 2010. The subject proposed amendments to California's regulations will be finalized by means of a 15-day notice once the national rule has been finalized.

California's commitment to accept compliance with U.S. EPA-adopted greenhouse gas standards as compliance with California's standards in the 2012 through 2016 model years has been and remains contingent on U.S. EPA adopting a final rule that preserves the benefits of the Pavley regulations. This will require that U.S. EPA adopt greenhouse gas standards that will achieve on average 250 grams/mile of CO<sub>2</sub> in model year 2016 across the light-duty fleet, as currently proposed in the NPRM. ARB believes that this fleet average would provide roughly equivalent greenhouse gas reductions in the 2016 model year from the California fleet currently subject to the AB 1493 (Pavley) regulations. Furthermore, while ARB understands the need for U.S. EPA to include compliance flexibilities in the final rule, it is important that such flexibilities do not significantly and demonstrably diminish the emission benefits of the National Program.



## COMPARABLE FEDERAL REGULATIONS

There are currently no federal greenhouse gas emission standards for the subject new motor vehicles. However, as noted above, on September 28, 2009, an NPRM was issued by U.S. EPA and the federal Department of Transportation for a joint rulemaking that proposes a coordinated federal greenhouse gas emission reduction and fuel economy program for light-duty vehicles, beginning in the 2012 model year. This national rule is expected to be finalized by the end of March 2010.

## AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: "Notice of Public Hearing to Consider Proposed Amendments to New Passenger Motor Vehicle Greenhouse Gas Emission Standards for Model Years 2012–2016 to Permit Compliance Based on Federal Greenhouse Gas Emission Standards."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322–2990, at least 45 days prior to the scheduled hearing on February 25, 2010.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. Paul Hughes, Manager, Low-Emission Vehicle Implementation Section, at (626) 575–6977, or Ms. Sarah Carter, Staff Air Pollution Specialist, at (626) 575–6845.

Further, the agency representative and designated back-up contact persons, to whom nonsubstantive inquiries concerning the proposed administrative action may be directed, are Ms. Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, (916) 322–4011, or Ms. Trini Balcazar, Regulations Coordinator, (916) 445–9564. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2010/ghgpv10/ghgpv10.htm>.

## COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The proposal is not expected to negatively affect the cost of compliance for vehicle manufacturers that are subject to the requirements of the Pavley regulations. The proposed amendments provide manufacturers with the option of demonstrating compliance with California's regulations by demonstrating compliance with the National Program in the 2012 through 2016 model years. According to previous manufacturer statements, providing this National Program compliance option would reduce manufacturers' overall compliance costs. Manufacturers retain the option to comply with the regulations as they are currently written (i.e., manufacturers may elect to comply with the Pavley regulations in the 2012 through 2016 model years), in which case these amendments would produce no economic impacts.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the



economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses, because it does not apply to any businesses that fall under the definition of “small business.”

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

#### SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and written comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on January 11, 2010. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after January 11, 2010 and received **no later than 12:00 noon, February 24, 2010**, and must be addressed to the following:

Postal mail: Clerk of the Board, Air Resources  
Board  
1001 I Street, Sacramento, California  
95814

Electronic submittal: [http://www.arb.ca.gov/  
lispub/comm/bclist.php](http://www.arb.ca.gov/lispub/comm/bclist.php)

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and other search engines.

The Board requests, but does not require, that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have

time to fully consider each comment. The Board encourages members of the Public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

#### STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in sections 38510, 38560, 38562, 38563, 39500, 39600, 39601, 43013, 43018, 43018.5, 43101, 43104, and 43105, Health and Safety Code. This action is proposed to implement, interpret and make specific sections 38501, 38510, 38560, 38562, 38563, 39002, 39003, 39667, 43000, 43009.5, 43013, 43018, 43018.5, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43204, 43205, and 43211, Health and Safety Code.

#### HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15–days before it is adopted.

The public may request a copy of the modified regulatory text from ARB’s Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814 (916) 322–2990.

#### SPECIAL ACCOMMODATION REQUEST

**To request a special accommodation or language needs for any of the following:**

- An interpreter to be available at the hearing.
- Have documents available in an alternate format (i.e. Braille, large print) or another language.
- A disability–related reasonable accommodation.

Please contact the Clerk of the Board at (916) 322–5594 or by facsimile at (916) 322–3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

**Para solicitar alguna comodidad especial o si por su idioma necesita cualquiera de los siguientes:**

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alternativo (es decir, sistema Braille, letra grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Porfavor llame a la officina del Consejo a (916) 322-5594 o envíe un fax a (916) 322-3928 lo mas pronto possible, pero no menos de 10 dias de trabajo antes del el dia programado para la audencia del Consejo. TTY/TDD/ Personas que nesessitan este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

**TITLE 17. CALIFORNIA AIR RESOURCES BOARD**

**NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF A PROPOSED REGULATION FOR REDUCING SULFUR HEXAFLUORIDE EMISSIONS FROM GAS INSULATED SWITCHGEAR**

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider the adoption of a new regulation to reduce sulfur hexafluoride (SF<sub>6</sub>) emissions from gas insulated switchgear used in electric power systems.

DATE: February 25, 2010

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency  
Air Resources Board  
Byron Sher Auditorium, Second Floor  
1001 I Street  
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., February 25, 2010 and may continue at 8:30 a.m., February 26, 2010. This item may not be considered until February 26, 2010. Please consult the agenda for the meeting date and time, which will be available at least 10 days before February 25, 2010, to determine the day on which this item will be considered.

**INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW**

**Sections Affected:** Proposed adoption of California Code of Regulations, title 17, division 3, chapter 1, sub-

chapter 10, article 4, subarticle 3.1., Regulation for Reducing Sulfur Hexafluoride Emissions from Gas Insulated Switchgear, sections 95350, 95351, 95352, 95353, 95354, 95355, 95356, 95357, 95358, and 95359.

**Background:**

Governor Schwarzenegger signed the California Global Warming Solutions Act of 2006 (AB 32) on September 27, 2006. When the Legislature adopted AB 32, it declared that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. AB 32 directed ARB to establish a statewide greenhouse gas (GHG) emissions limit for 2020 based on 1990 emissions.

AB 32 directs the Board to carry out specific tasks related to reducing GHG emissions. These tasks include monitoring GHG emissions, implementing a program of annual reporting of GHG emissions from GHG emission sources, and accounting for all GHG emissions, including emissions from electricity generated in California or imported from other states, providing reporting tools for such data, and ensuring emitting sources maintain records of GHG emissions.

AB 32 directed ARB to adopt a Scoping Plan by January 1, 2009, that shows how emission reductions will be achieved from significant GHG sources through regulations, market mechanisms, and other actions. The Scoping Plan identifies the regulation for reduction of SF<sub>6</sub> from electrical equipment as a possible GHG emission reduction measure. ARB and other State agencies are now developing and implementing proposed measures to meet the State's GHG emission reduction goals.

SF<sub>6</sub> is a colorless, odorless, nontoxic, and nonflammable gas with a global warming potential that is 23,900 times that of carbon dioxide (CO<sub>2</sub>). Since the 1980s, SF<sub>6</sub> has been used extensively in electrical power systems as a dielectric medium (insulator) and interrupter (arc quencher) in medium and high voltage gas insulated switchgear or "GIS." The term switchgear, used in association with the electric power system, refers to the combination of electrical switches, disconnects, fuses and/or circuit breakers used to isolate electrical equipment. This equipment is commonly found in electrical substations and can be located either above or below ground in protected vaults. Nearly 80 percent of California's SF<sub>6</sub> emissions result from leakage and handling losses from GIS.

Worldwide, only the European Commission currently regulates SF<sub>6</sub> use in GIS. Nationally, in 1999, the United States Environmental Protection Agency (U.S. EPA) created a voluntary SF<sub>6</sub> emission reduction program which has been effective in gaining substantial emission reductions from its participants. However, because this is a voluntary program, only five of the scores

of California utilities and power producers are active in the U.S. EPA's voluntary program.

Although a potent greenhouse gas, SF<sub>6</sub> has properties that allow the optimized operation of electrical switchgear and electricity networks throughout California. Despite international research efforts, no equivalent alternative has been identified, nor is one currently available. Because of its simplicity and cost-effectiveness, this proposed measure may influence future national and international SF<sub>6</sub> regulations.

## DESCRIPTION OF THE PROPOSED REGULATORY ACTION

The proposed regulation would require owners of gas insulated switchgear (GIS) to establish an initial, maximum emission rate of ten percent of their nameplate capacity of SF<sub>6</sub> by January 1, 2011. GIS owners would be required to continually reduce SF<sub>6</sub> emission rates by one-percent-per-year over the following nine-year period beginning in 2011 and ending in 2020. The maximum emission rate in 2020 would be set at one percent. This time period coincides with the timeline established by the Global Warming Solutions Act (Health & Saf. Code §§ 35800 *et seq.*) to meet GHG emission reductions.

Specific methods to attain required emission reductions are not set out in the proposed regulation. Rather, affected entities would determine which methods they would employ to meet the requirements. Currently, least-cost gas management techniques employed nationally and globally include technician training, SF<sub>6</sub> leak detection and repair, gas recycling, equipment evacuation, and equipment refurbishment or replacement. The following summarizes these established gas management techniques.

*Leak Detection and Repair (LDAR).* SF<sub>6</sub> leak detection is achieved using various techniques, including "sniffing" for gas with SF<sub>6</sub> gas sensors and using laser-based remote sensing technology. LDAR-based repairs address small leaks on specific components, such as a bushing or flange gasket.

*SF<sub>6</sub> Recycling.* Recycling gas cart systems are available which can withdraw, purify, and return SF<sub>6</sub> to gas-insulated equipment.

*Evacuation of Equipment.* Evacuation attains a high level of SF<sub>6</sub> recovery from closed-pressure equipment.

*Equipment Refurbishment.* Equipment refurbishment encompasses comprehensive repairs for large leakage losses. Refurbishment consists of disassembling, rebuilding and possibly

upgrading equipment using remachined, cleaned, and/or new components. Generally, equipment refurbishment represents a less expensive option than equipment replacement.

*Equipment Replacement.* Equipment replacement is undertaken when equipment parts are no longer available or when refurbishment will not correct leakage problems.

### Applicability

The proposed regulation would affect approximately 75 private and public entities including eight investor owned utilities, four large corporations (refineries employing on-site distributed electrical generation), approximately 50 publically-owned utilities and rural electric cooperatives, one State agency (Department of Water Resources), two federal agencies (Western Area Power Association and U.S. Department of Defense), and two national laboratories.

### Standards

The proposed regulation would establish maximum annual SF<sub>6</sub> emission rates for GIS owners. The emission rate requirements begin in 2011 at ten percent of the GIS owners' total equipment capacity averaged over the year. The emission rate would steadily decline by one percent per year until 2020. Beginning in 2020, the SF<sub>6</sub> emission rate would be set at one percent.

### Exemptions

Beginning in 2020 emissions due to an "emergency event" could be exempted from the emission rate calculation for that year, if those emissions cause the one percent emission rate limit to be exceeded. GIS owners would be required to demonstrate to the Executive Officer that the emergency event causing the emission rate to be exceeded was beyond the control of the GIS owner.

### Recordkeeping and Reporting

The regulation would require GIS owners annually to: (1) report their SF<sub>6</sub> emissions and emission rate; and (2) provide a complete inventory of all gas containers and GIS equipment. GIS owners would also be required to maintain and have this information available for ARB enforcement staff for inspection and verification.

### Environmental Impacts:

Staff estimates that the proposed SF<sub>6</sub> emission reduction measure would decrease GHG emissions by an average of 25,300 metric tons CO<sub>2</sub>-equivalent (MTCO<sub>2</sub>e) annually and 253,000 MTCO<sub>2</sub>e cumulatively over a ten year period. Because the proposed regulation reduces only GHG emissions by improving SF<sub>6</sub> management practices, it is not expected to result in any significant adverse air quality, wastewater, or hazardous waste impacts.



### Economic Impacts:

The projected total cost of the regulation over the ten year regulatory period is estimated to range from \$4,500,000 to \$7,000,000. The average cost per metric ton of CO<sub>2</sub>e emissions reduced, including recordkeeping and reporting costs, would range from \$18/MTCO<sub>2</sub>e to \$28/MTCO<sub>2</sub>e. Unit costs of emission reductions for the proposed SF<sub>6</sub> GIS regulation vary greatly among emission reduction methods—from -\$1/MTCO<sub>2</sub>e for SF<sub>6</sub> recycling to \$55/MTCO<sub>2</sub>e for GIS repair and replacement. ARB staff assumed that less expensive methods are employed first, and that the unit cost of SF<sub>6</sub> emission reductions steadily increases over the regulatory period. The high end of the estimate is extremely conservative based on final emission reductions resulting exclusively from equipment replacement, which is the most costly emission control technique. During the final years of the regulatory period, staff believes a combination of less costly emission reduction methods will continue to be used in addition to undertaking equipment replacement, maintaining reduction costs nearer to \$18/MTCO<sub>2</sub>e.

### COMPARABLE FEDERAL REGULATIONS

There are no federal regulations that mandate the reduction of SF<sub>6</sub> from GIS.

### AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The ISOR is entitled, "Initial Statement of Reasons for the Proposed Regulation for Reducing Sulfur Hexafluoride Emissions from Gas Insulated Switchgear."

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on ARB's website listed below, or may be obtained from ARB's Public Information Office, Visitors and Environmental Services Center, 1001 I Street, First Floor, Sacramento, California, 95814, (916) 322-2990.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons identified below, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. David Mehl, Stationary Source Division, Energy Section Manager, at (916) 323-1491, or Ms. Michelle Garcia, Air Pollution Specialist, at (916) 322-8387.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, and Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533.

The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are also available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2010/sf6elec/sf6elec.htm>.

### COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below. The ARB Executive Officer has determined that, except as discussed below, the proposed regulatory action would not create costs or savings, as defined in Government Code sections 11346.5(a)(5) and 11346.5(a)(6), to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary costs or savings to any State or local agencies.

The proposed regulation would impose costs on some State and local agencies, but not on school districts. One State agency that may experience an economic impact is the State Department of Water Resources (DWR). DWR generates electricity and owns GIS used in its electrical power systems. However, there may be no net fiscal impact on DWR if it is able to either offset its costs by reduced purchases of SF<sub>6</sub> gas, or if it is able to use existing administrative mechanisms to pass minor costs on to its customers.

The Executive Officer has determined that the proposed regulatory action may create costs and impose a mandate on some local agencies. The local agencies impacted would be publically-owned utilities, which own GIS within their electric power systems. However, there may be no net fiscal impact on the publically-owned utilities if they are able to either offset their costs by reduced purchases of SF<sub>6</sub> gas, or are able to use existing administrative mechanisms to pass the costs on to their customers.



Because the requirements imposed by the regulation are generally applicable to all entities subject to the regulations, the Executive Officer has determined that the proposed regulatory action imposes no costs on local agencies or school districts that are required to be reimbursed by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, and does not impose a mandate on local agencies or school districts that is required to be reimbursed pursuant to section 6 of Article XIII B of the California Constitution.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. ARB has determined that representative private persons may be affected by the cost impacts from the proposed regulatory action. The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, ARB must determine that no reasonable alternative considered by ARB, or that has otherwise been identified and brought to the attention of ARB, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

#### SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and com-

ments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on January 11, 2010. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after January 11, 2010, and received **no later than 12:00 noon, February 24, 2010**, and must be addressed to the following:

Postal mail: Clerk of the Board, Air Resources  
Board  
1001 I Street, Sacramento, California  
95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and other search engines.

The Board requests, but does not require, that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

#### STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted to ARB in Health and Safety Code sections 38510, 38560, 38580, 39600, 39601, 41510, 41511, and 41513. The proposed regulations will implement, interpret and/or make specific Health and Safety Code sections 38560, 38580, 39600, 39601, 41510, 41511, and 41513.

#### HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text, as modified, is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regula-

tory language, as modified, could result from the proposed regulatory action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Visitors and Environmental Services Center, 1001 I Street, First Floor, Sacramento, California, 95814, (916) 322-2990.

#### SPECIAL ACCOMMODATION REQUEST

**To request a special accommodation or language needs for any of the following:**

- An interpreter to be available at the hearing.
- Have documents available in an alternate format (i.e. Braille, large print) or another language.
- A disability-related reasonable accommodation.

Please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

**Para solicitar alguna comodidad especial o si por su idioma necesita cualquiera de los siguientes:**

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alternativo (es decir, sistema Braille, letra grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Porfavor llame a la oficina del Consejo a (916) 322-5594 o envíe un fax a (916) 322-3928 lo mas pronto posible, pero no menos de 10 dias de trabajo antes del el dia programado para la audencia del Consejo. TTY/TDD/ Personas que nesessitan este servicion pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

#### TITLE 28. DEPARTMENT OF MANAGED HEALTH CARE

**ACTION:** Notice of Rulemaking Action  
Title 28, California Code of Regulations

**SUBJECT:** Discount Health Plans; Adoption of Article 2.5 and Amendment of Article 3 in Title 28, California Code of Regulations; Control No. 2001-0024.

#### PUBLIC PROCEEDINGS

Notice is hereby given that the Director of the Department of Managed Health Care ("Department") proposes to adopt regulations under the Knox-Keene Health Care Service Plan Act of 1975 ("Act") establishing licensing requirements and standards for discount health plans to protect consumers who purchase discount health products. This rulemaking action proposes to adopt Article 2.5 and amend Article 3 in Title 28, California Code of Regulations.

#### PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, any interested person, or his or her duly authorized representative, may submit a written request for a public hearing, pursuant to section 11346.8, subdivision (a), of the Government Code. The written request for hearing must be received by one of the Department's contact persons, designated below, no later than 15 days before the close of the written comment period.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written statements, arguments, or contentions (collectively referred to as "comments") relating to the proposed regulatory action by the Department. Comments must be received by the Department of Managed Health Care, Office of Legal Services, **by 5 p.m. on February 22, 2010**, which this notice hereby designates as the close of the written comment period.

Please address all comments to the Department of Managed Health Care, Office of Legal Services, Attention: Regulations Coordinator. Comments may be transmitted by regular mail, fax, email, or via the Department's website:

Website: <http://wpso.dmhc.ca.gov/regulations/>

Email: [regulations@dmhc.ca.gov](mailto:regulations@dmhc.ca.gov)

Mail: Department of Managed Health Care  
Office of Legal Services  
Attn: Regulations Coordinator  
980 9<sup>th</sup> Street, Suite 500  
Sacramento, CA 95814

Fax: (916) 322-3968

Please note that if comments are sent via the website, email or fax, there is no need to send the same comments by mail delivery. All comments, including comments sent via the website, email, fax, or mail, should include the author's name and U.S. Postal Service mailing address so the Department can provide commenters

with notice of any additional proposed changes to the regulation text. Please identify the action by using the Department's rulemaking title and control number, **Dis-count Health Plans, Control No. 2001-0024**, in any of the above inquiries.

## CONTACTS

Inquiries concerning the proposed adoption of these regulations may be directed to:

Christina Hooke, Senior Staff Counsel  
Department of Managed Health Care  
Office of Legal Services  
980 9<sup>th</sup> Street, Suite 500  
Sacramento, CA 95814  
Telephone: (916) 323-9605  
Fax: (916) 322-3968  
E-mail: chooke@dmhc.ca.gov

The backup contact is:

Emilie Alvarez, Regulations Coordinator  
Department of Managed Health Care  
Office of Legal Services  
980 9<sup>th</sup> Street, Suite 500  
Sacramento, CA 95814  
Telephone: (916) 445-9960  
Fax: (916) 322-3968  
E-mail: ealvarez@dmhc.ca.gov

## AVAILABILITY OF DOCUMENTS

The Department has prepared and has available for public review the Initial Statement of Reasons, the text of the proposed regulation, and all information upon which the proposed regulations are based ("rulemaking file"). This information is available by request to the Department of Managed Health Care, Office of Legal Services, 980 9<sup>th</sup> Street, Suite 500, Sacramento, CA 95814, Attention: Regulations Coordinator.

The Notice of Proposed Rulemaking Action, the proposed text of the regulations, and the Initial Statement of Reasons are also available on the Department's website at <http://wpso.dmhc.ca.gov/regulations/>, under the heading "Open Pending Regulations."

You may obtain a copy of the final statement of reasons, once it has been prepared, by making a written request to the Regulation Coordinator named above.

## AVAILABILITY OF MODIFIED TEXT

The full text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at

least 15 days before the date the Department adopts the regulations. A request for a copy of any modified regulation(s) should be addressed to the Regulations Coordinator. The Director will accept comments via the Department's website, mail, fax, or email on the modified regulation(s) for 15 days after the date on which the modified text is made available. The Director may thereafter adopt, amend, or repeal the foregoing proposal substantially as set forth without further notice.

## AUTHORITY AND REFERENCE

Health & Safety Code Section 1341, subdivision (a), authorizes the Department of Managed Health Care to regulate "health care service plans." Health & Safety Code Section 1345, subdivision (f)(1), defines a "health care service plan" as "any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of subscribers or enrollees."

Health & Safety Code Section 1344 authorizes the Director of the Department of Managed Health Care ("Director") to adopt, amend, and rescind regulations as necessary to carry out the provisions of the Act, including rules governing applications and reports, and defining any terms, whether or not used in the Act, insofar as the definitions are not inconsistent with the provisions of the Act.

Health & Safety Code Section 1343, subdivision (b), provides the Director with the authority, by rule or order, to exempt any class of persons or plan contracts from the requirements of the Knox-Keene Act if the Director finds the action to be in the public interest and not detrimental to the protection of subscribers, enrollees, or persons regulated under the Act, and the regulation of the persons or plan contracts is not essential to the purposes of the Act.

Health & Safety Code Section 1346 vests in the Director additional powers to administer and enforce the Act, including but not limited to, the power to study, investigate, research, and analyze matters affecting the interests of plans, subscribers, enrollees, and the public, and to promote and establish standards of ethical conduct for the administration of plans.

Health & Safety Code Section 1342 codifies the intent and purpose of the California State Legislature to advance the delivery and quality of health and medical care provided to enrollees of a health care service plan by promoting effective representation of the interests of subscribers and enrollees, by ensuring that subscribers and enrollees are educated and informed of the benefits and services available in order to enable a rational consumer choice in the marketplace, and by prosecuting

malefactors who make fraudulent solicitations or who use deceptive methods, misrepresentations, or practices, which are inimical to the general purpose of enabling a rational choice for the consumer public.

These rules also refer to other sections of the Knox–Keene Act, including Health and Safety Code Sections 1345, 1349, 1351, 1351.1, 1351.3, 1352, 1352.1, 1353, 1356, 1359, 1360, 1360.1, 1361, 1362, 1363, 1357.51, 1365, 1365.5, 1366.1, 1367, 1367.04, 1367.4, 1367.8, 1367.26, 1368, 1368.015, 1368.02, 1373.14, 1374.7, 1374.29, 1374.51, 1374.72, 1374.75, 1375.1, 1375.6, 1375.7, 1379, 1385, 1387, 1395 and 1395.6. These sections relate to Knox–Keene consumer protection, licensing, and health plan operational requirements that the Department has determined should be applied to discount plans. Additional sections of the Knox–Keene Act, and additional consumer protection, licensing, and health plan operational requirements may be added to, or deleted from, the requirements made applicable to discount plans through future revisions to the proposed regulation text as determined necessary and appropriate by the Department upon consideration of the issues and concerns raised during the formal rulemaking process.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Under existing law in the Knox–Keene Act, it is unlawful for any person to operate a health care service plan, as defined, without being licensed and current law sets forth licensing requirements and regulations for these plans. See Health and Safety Code sections 1345, 1349, and 1351, for examples of definitions and regulatory provisions. This rulemaking package proposes to add Article 2.5 (Sections 1300.49.1.1 – 1300.49.1.12) and Article 3 (Section 1300.51.01) to Title 28 of the California Code of Regulations.

The purpose of the proposed regulations is to clarify the operating and licensing requirements for discount health plans. The proliferation of discount health plans and a rising number of consumer complaints regarding such plans highlight the need for structured regulation to ensure consumer protection.

The regulations accommodate the unique aspects of the discount plan business model while setting requirements that increase consumer awareness about the nature of the discount health products. For example, the regulations contain requirements concerning the licensing of discount health plans, the marketing of discount health products, the availability and accessibility of discounted provider services, grievance systems, cancellation and termination, language assistance for subscribers and enrollees, financial stability of the discount health plans, subscriber and enrollee disclosure forms,

written contracts between discount health plans and subscribers or enrollees, and written contracts between discount health plans and providers.

#### DOCUMENTS INCORPORATED BY REFERENCE

2009 Medicare Physician Fee Schedule as set forth in 73 Federal Register 69726–70237 (November 19, 2008) and amended by 73 Federal Register 80302–80305 on December 31, 2008.

#### ALTERNATIVES CONSIDERED

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the above action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The Department has not identified any reasonable alternative to the proposed regulation.

#### SUMMARY OF FISCAL IMPACT

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Direct or indirect costs or savings in federal funding to the state: None.
- Cost to local agencies and school districts required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- Costs to private persons or businesses directly affected: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effect on housing costs: None.
- Other non–discretionary cost or savings imposed upon local agencies: None.

#### DETERMINATIONS

The Department has made the following initial determinations:

From December 14, 2005 to the present, discount health plans have been required to obtain licensure with the Department prior to engaging in business as a discount health plan or offering a discount health product.



Because the proposed regulations do not change the existing law and instead clarify the licensing and operational requirements for discount health plans, they have no significant fiscal impact.

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs requiring reimbursement by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has determined that the regulations will have no significant effect on housing costs.

The Department has determined that the regulations do not affect small businesses because health care service plans are not considered a small business under Government Code section 11342.610, and because the proposed rulemaking seeks to streamline existing licensing and regulatory requirements for discount plans.

The Department has determined that the regulations will not significantly affect the creation or elimination of jobs within the State of California.

The Department has determined that the regulations will not significantly affect the creation of new businesses, or the elimination of existing businesses within the State of California.

The Department has determined that the regulations will not significantly affect the expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

#### FINDING REGARDING REPORTING REQUIREMENT

Government Code section 11346.3, subdivision (c), provides:

No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

The Department has determined that all reporting requirements included in these regulations are necessary for the health, safety, and welfare of the people of the State of California. These reporting requirements ensure that consumers who purchase discount health products obtain real discounts and understand they are not purchasing health insurance coverage.

## DISAPPROVAL DECISION

### DEPARTMENT OF TRANSPORTATION

State of California  
Office of Administrative Law

In re:  
Department of Transportation

Regulatory Action: Title 21  
California Code of Regulations

Amend section: 1411.7

### DECISION OF DISAPPROVAL OF REGULATORY ACTION

Government Code Section 11349.3

OAL File No. 2009-1030-01 S

#### SUMMARY OF REGULATORY ACTION

The Department of Transportation ("Department") proposed to amend section 1411.7 of title 21 of the California Code of Regulations. Specifically, the amendments sought to define the term "fire apparatus," increase the allowable length of a single unit fire apparatus, increase the weight limit on a steering axle and a single drive axle, and provide that a fire apparatus meeting the requirements of this regulation may operated on state and local roadways without a transportation permit. On October 30, 2009, the Department of Transportation submitted the proposed amendments to the Office of Administrative Law ("OAL") for review in accordance with the Administrative Procedure Act ("APA"). On December 16, 2009, OAL disapproved the proposed amendments. This Decision of Disapproval explains the reasons for OAL's action.

#### DECISION

OAL disapproved the proposed amendment of section 1411.7 for failure to meet the clarity and consistency standards, failure to obtain the required approval of the State Fire Marshal, failure to include the National Fire Protection Association 1901 Standard in the record as reference material and comply with the requirements of title 1, CCR, section 20 concerning incorporation of that standard by reference, and for a minor defect in the signing of the form 400.

Date: December 23, 2009 \_\_\_\_\_

David D. Potter  
Senior Staff Counsel  
FOR: SUSAN LAPSLEY  
Director

Original: Randell Iwasaki  
Copy: Casey Robb

## **SUMMARY OF REGULATORY ACTIONS**

### **REGULATIONS FILED WITH SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2009-1112-02  
AIR RESOURCES BOARD  
Non-Semiconductor 2009

This action adopts a regulatory program intended to reduce emissions of sulfur hexafluoride, a gas with very high global warming potential and a long life in the atmosphere, in order to limit global warming that it would tend to cause.

Title 17  
California Code of Regulations  
ADOPT: 95340, 95341, 95342, 95343, 95344,  
95345, 95346  
Filed 12/28/2009  
Effective 01/01/2010  
Agency Contact: Trini Balcazar (916) 445-9564

File# 2009-1123-03  
DEPARTMENT OF CORRECTIONS AND  
REHABILITATION  
Transitional Housing Unit

This rulemaking adopts one new section and amends two sections in Title 15 of the California Code of Regulations. This rulemaking is the adoption of a Transitional Housing Unit (THU) program for inmates in the process of debriefing (disassociate themselves from gang activity). This is designed to provide a program for inmates to safely debrief without having to serve a lengthy term in the Segregated Housing Unit. The purpose of the THU program is to support the debriefing process. This housing unit is necessary to review and

monitor the inmates to insure that they are in fact sincere in their desire to leave the gang. These regulations establish the timeline of being placed in the THU including a two-week orientation followed by a five-month, two-week stay in the THU. The longer stay is designed to assist the inmate with learning the skills necessary to transition into an integrated yard setting with other races, ethnic groups and disassociated gang members. These regulations establish the components of the THU program including conflict resolution, anger management and other activities designed to assist the inmate in transitioning from being a gang member to a disassociated member.

Title 15  
California Code of Regulations  
ADOPT: 3378.3 AMEND: 3000, 3378.1  
Filed 12/29/2009  
Effective 01/28/2010  
Agency Contact:  
John McClure (916) 255-5464

File# 2009-1228-01  
DEPARTMENT OF FOOD AND AGRICULTURE  
Oriental Fruit Fly Interior Quarantine

This regulatory action readopts a previous emergency action that removed the approximate 109 square mile quarantine for Oriental fruit fly from the Lakewood area in Orange and Los Angeles counties. The fly was considered eradicated from this area on June 21, 2009 so it was no longer necessary to regulate the movement of hosts and possible carriers.

Title 3  
California Code of Regulations  
AMEND: 3423(b)  
Filed 12/29/2009  
Effective 12/29/2009  
Agency Contact:  
Stephen S. Brown (916) 654-1017

File# 2009-1116-01  
DEPARTMENT OF FOOD AND AGRICULTURE  
Light Brown Apple Moth Interior Quarantine

This certificate of compliance makes permanent five prior emergency regulatory actions (OAL file nos. 2009-0324-02 E, 2009-0420-01 E, 2009-0515-02 E, 2009-0520-01 E and 2009-0608-02 E) that established or enlarged quarantine areas for the Light Brown Apple Moth (*Epiphyas postvittana*) in Alameda, Contra Costa, Marin, Monterey, Santa Barbara, San Benito, Santa Clara, Solano, San Mateo, Sonoma and Napa Counties. (Please note that two of these emergencies were refiled pursuant to OAL file no. 2009-0903-04 EE.)

**Title 3**

California Code of Regulations

AMEND: 3434(b)

Filed 12/28/2009

Agency Contact:

Stephen S. Brown (916) 654-1017

File# 2009-1223-02

DEPARTMENT OF FOOD AND AGRICULTURE

Light Brown Apple Moth Interior Quarantine

This regulatory action combines two previous emergency actions (2009-0617-04 E and 2009-0624-02 E) into one file and re-adopts the previous emergency actions. These actions made changes to the interior quarantine areas for the light brown apple moth.

**Title 3**

California Code of Regulations

AMEND: 3434(b)

Filed 12/28/2009

Effective 12/28/2009

Agency Contact:

Stephen S. Brown (916) 654-1017

File# 2009-1223-04

DEPARTMENT OF PARKS AND RECREATION

Safe Vehicle Operation at Oceano Dunes State Vehicular Recreation Area

This regulatory action relates to the operation of vehicles within the Oceano Dunes State Vehicular Recreation Area. It requires a whip on all vehicles in the dunes area and prohibits the operation of any vehicle at a speed or in a manner that endangers health or safety.

**Title 14**

California Code of Regulations

AMEND: 4609

Filed 12/29/2009

Effective 01/01/2010

Agency Contact: John Pelonio (916) 324-4442

**CCR CHANGES FILED  
WITH THE SECRETARY OF STATE  
WITHIN July 29, 2009 TO  
December 30, 2009**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

**Title 2**

12/22/09 AMEND: 1859.96, 1859.148.2, 1859.166.2

12/21/09 AMEND: 1896.4, 1896.12

12/21/09 ADOPT: 20714.5 AMEND: 20711, 20712, 20714, 20716, 20717, 20718, 20719

11/24/09 AMEND: 1859.2

11/24/09 AMEND: 1859.2, 1859.35, 1859.51, Form SAB 50-02, SAB Form 50-03, SAB Form 50-04

11/17/09 ADOPT: 20810, 20811, 20812, 20813, 20814, 20815, 20816, 20817, 20818, 20819, 20820, 20821, 20822, 20823, 20830, 20831, 20832, 20833, 20840, 20841, 20842

11/16/09 AMEND: 1859.129, 1859.197

11/12/09 ADOPT: 18944.4 AMEND: 18944.3

11/12/09 ADOPT: 18219, 18734

11/09/09 ADOPT: 1859.148.2, 1859.166.2 AMEND: 1859.2, 1859.121, 1859.164.2, 1859.197

11/09/09 ADOPT: 604 REPEAL: 604

11/05/09 ADOPT: 60800, 60801, 60802, 60803, 60804, 60805, 60806, 60807, 60808, 60809, 60810, 60811, 60812, 60813, 60814, 60815, 60816, 60817, 60818, 60819, 60820, 60821, 60822, 60823, 60824, 60825, 60826, 60827, 60828, 60829, 60830, 60831, 60832, 60833, 60834, 60835, 60836, 60837, 60840, 60841, 60842, 60843, 60844, 60845, 60846, 60847, 60848, 60849, 60850, 60851, 60852, 60853, 60854, 60855

11/03/09 ADOPT: 1859.96 AMEND: 1859.2, 1859.90

10/01/09 AMEND: 2291, 2292, 2294 ADOPT: 2297

10/01/09 AMEND: 1898.2, 1898.7

09/22/09 ADOPT: 18603, 18603.1

09/22/09 ADOPT: 18901.1 AMEND: 18420.1

09/18/09 AMEND: 1859.76

09/17/09 AMEND: 2270, 2271

09/14/09 AMEND: 588.1, 588.2

08/31/09 ADOPT: 1859.324.2 AMEND: 1859.302, 1859.324.1, 1859.330

08/03/09 ADOPT: 647.5, 647.25, 647.36, 647.37.1 AMEND: 647.1, 647.2, 647.3, 647.4, 647.20, 647.20.1, 647.22, 647.23, 647.24, 647.26, 647.30, 647.31, 647.32, 647.33, 647.35, 647.38 REPEAL: 647.25, 647.34

07/30/09 ADOPT: 1899.570, 1899.575, 1899.580, 1899.585

**Title 3**

12/29/09 AMEND: 3423(b)  
 12/28/09 AMEND: 3434(b)  
 12/28/09 AMEND: 3434(b)  
 12/16/09 AMEND: 3591.20(a)  
 12/16/09 AMEND: 3406(b)(c)  
 11/25/09 AMEND: 3435(b)  
 11/24/09 AMEND: 3430(b)  
 11/16/09 AMEND: 3435(b)  
 11/16/09 AMEND: 3406(b)(c)  
 11/10/09 AMEND: 3434(b)  
 10/30/09 AMEND: 3435(b), (c) and (d)  
 10/15/09 AMEND: 3434(b)  
 10/08/09 AMEND: 3434(b)  
 10/08/09 AMEND: 3591.20(a)  
 09/24/09 AMEND: 3406(b)  
 09/24/09 AMEND: 3434(b)  
 09/22/09 AMEND: 6562  
 09/15/09 AMEND: 3434(b)  
 09/14/09 AMEND: 3435(b)  
 09/10/09 ADOPT: 2300.1, 2300.2, 2300.3  
 AMEND: 2300  
 09/09/09 AMEND: 3434(b)  
 09/03/09 AMEND: 3434(b)  
 09/01/09 AMEND: 3435(b)  
 08/28/09 AMEND: 3434(b)  
 08/27/09 AMEND: 3435(b)  
 08/27/09 AMEND: 3588  
 08/26/09 AMEND: 6400, 6502, 6620,  
 6626(a)–(b), 6626(c), 6627, 6670, 6672,  
 6736, and incorporated by reference  
 forms  
 08/20/09 AMEND: 3406(b)  
 08/20/09 AMEND: 3591.13(a)  
 08/13/09 AMEND: 3434(b)  
 08/13/09 AMEND: 6618, 6619, 6761.1, 6770,  
 6771  
 08/12/09 ADOPT: 902.15  
 08/07/09 AMEND: 3406(b)  
 08/05/09 AMEND: 3434(b), 3434(c)  
 08/04/09 AMEND: 3423(b)  
 07/31/09 ADOPT: 3436

**Title 4**

12/17/09 AMEND: 8070, 8072, 8073, 8074  
 12/09/09 AMEND: 12388  
 12/08/09 ADOPT: 12218.8, 12218.9, 12238,  
 12239 AMEND: 12200.9, 12200.10A,  
 12200.11, 12200.13, 12203.2, 12205.1,  
 12218, 12218.7, 12220.13, 12220.18,  
 12220.23, 12225.1, 12233, 12235  
 10/27/09 AMEND: 8034, 8035, 8042, 8043  
 10/20/09 AMEND: 1606

10/07/09 AMEND: 7030, 7034, 7035, 7037, 7038,  
 7042, 7044, 7045, 7046, 7048, 7049,  
 7050  
 08/25/09 ADOPT: 12380, 12381, 12384, 12385,  
 12386 AMEND: 12360  
 08/04/09 AMEND: 1853  
 07/31/09 AMEND: 10020  
 07/31/09 ADOPT: 7051, 7052, 7053, 7054, 7055,  
 7056, 7057, 7058, 7059, 7060, 7061,  
 7062, 7063, 7064, 7065, 7066, 7067,  
 7068, 7069, 7070, 7071

**Title 5**

12/18/09 AMEND: 41905  
 12/16/09 ADOPT: 19828.4, 19837.3, 19839,  
 19845.2 AMEND: 19815, 19816,  
 19816.1, 19828.3, 19837.2, 19845.1,  
 19846  
 12/16/09 ADOPT: 30730, 30731, 30732, 30733,  
 30734, 30735, 30736  
 11/03/09 AMEND: 1200, 1204.5, 1207, 1207.5,  
 1210, 1211.5, 1215, 1215.5, 1216  
 REPEAL: 1207.2  
 08/20/09 ADOPT: 19825.1 AMEND: 19816,  
 19816.1, 19825, 19825.1 (renumber to  
 19825.2)

**Title 8**

12/09/09 AMEND: 9812, 10111.2  
 12/02/09 AMEND: 4086  
 11/19/09 AMEND: 15600, 15601, 15602, 15603,  
 15604, 15605, 15606, 15607, 15611  
 11/04/09 AMEND: 9771, 9778, 9779, 9779.5  
 REPEAL: 9779.9  
 10/28/09 AMEND: 3333, 3650  
 10/26/09 AMEND: 5306  
 10/22/09 AMEND: 3277  
 10/07/09 AMEND: 2395.6  
 08/31/09 AMEND: 3385  
 08/27/09 AMEND: 3400  
 07/31/09 AMEND: 1637, 1646

**Title 9**

12/21/09 ADOPT: 9550  
 12/21/09 ADOPT: 10700, 10701 AMEND: 10518,  
 10529 REPEAL: 10532, 10533  
 11/04/09 ADOPT: 3200.125, 3200.215, 3200.217,  
 3200.253, 3200.254, 3200.255,  
 3200.256, 3200.275, 3200.276,  
 3200.320, 3200.325, 3550, 3810, 3820,  
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10/26/09	ADOPT: 4350	REPEAL: 260.101, 260.103.3, 260.237.1
09/22/09	ADOPT: 7213.4, 7213.5, 7213.6, 7214.1, 7214.2, 7214.3, 7214.4, 7214.6, 7214.8, 7215.1, 7216.1, 7216.2, 7220.3, 7220.5, 7220.7 AMEND: 7213, 7213.1, 7213.2, 7213.3, 7214, 7215, 7216, 7218, 7220, 7221, 7224, 7225, 7226, 7226.1, 7226.2, 7227, 7227.1, 7227.2 REPEAL: 7219	09/23/09 AMEND: 260.102.8(b), 260.103.6, 260.105.15, 260.113, 260.140.8(b)(4), 260.140.42(e), 260.140.71.2, 260.140.114.1(c), 260.151(a), 260.236(c)(3)(C), 260.608, 1457(d), 1950.122.1, 2020(c), 2030, Note after Subchapter 6 REPEAL: 250.50, 250.51
09/14/09	ADOPT: 4000, 4005	09/17/09 AMEND: 2699.6805
08/04/09	AMEND: 7331	08/19/09 AMEND: 2699.6707, 2699.6711, 2699.6721, 2699.6723, 2699.6725, 2699.6809
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12/15/09	REPEAL: 2232.45.1, 2232.45.2, 2232.45.3, 2232.45.4, 2232.45.5	08/04/09 ADOPT: 2355.1, 2355.2 AMEND: 2359.4 amended and renumbered to 2355.3, 2359.7 renumbered to 2355.4, 2359.8 renumbered to 2355.5 REPEAL: 2355.1, 2355.2, 2355.3, 2355.4, 2355.5, 2355.6, 2355.7, 2355.8, 2356.1, 2356.2, 2356.3, 2356.4, 2356.5, 2356.6, 2356.7, 2356.8, 2356.9, 2357.1, 2357.2, 2357.3, 2357.4, 2357.5, 2357.6, 2357.7, 2357.8, 2357.9, 2357.10, 2357.11, 2357.12, 2357.13, 2357.14, 2357.15, 2357.16, 2357.17, 2357.18, 2357.19, 2358.1, 2358.2, 2358.3, 2358.4, 2358.5, 2358.6, 2358.7, 2358.8, 2358.9, 2359.1, 2359.2, 2359.3, 2359.5, 2359.6
12/08/09	AMEND: 2699.6603	07/29/09 ADOPT: 2194.50, 2194.51, 2194.52, 2194.53, 2194.54, 2194.55
12/07/09	ADOPT: 2309.2, 2309.3, 2309.4, 2309.5, 2309.6, 2309.7, 2309.8, 2309.9, 2309.10, 2309.11, 2309.12, 2309.13, 2309.14, 2309.15, 2309.16, 2309.17, 2309.18, 2309.20	<b>Title 11</b>
12/03/09	AMEND: 2698.600, 2698.602	
12/01/09	ADOPT: 2031.1, 2031.2, 2031.3, 2031.4, 2031.5, 2031.6, 2031.7, 2031.8 AMEND: 2031.9, 2031.10	11/09/09 AMEND: 1005, 1007, 1008
12/01/09	ADOPT: 2850.1, 2850.2, 2850.3, 2850.4, 2850.5, 2850.6, 2850.7, 2850.8, 2850.9, 2850.10	10/14/09 AMEND: 9052(c), 9053(b), 9053(c), 9053(e)(5)(A)4, 9053(e)(10)(A), 9053(e)(10)(B), 9054(e)(4), 9057(b), 9059(b), 9059(c), 9059(e)(9)(A), 9059(e)(9)(B), 9060(e)(4)
12/01/09	ADOPT: 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10	<b>Title 12</b>
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11/19/09	AMEND: 5500, 5501, 5502, 5503, 5504, 5505, 5506, 5507	10/13/09 ADOPT: 600 REPEAL: 600
11/19/09	AMEND: 2498.5	09/17/09 ADOPT: 508
11/19/09	AMEND: 2498.5	<b>Title 13</b>
11/19/09	AMEND: 2498.4.9	
11/19/09	AMEND: 2498.4.9	12/15/09 ADOPT: 155.07 AMEND: 155.05
11/10/09	AMEND: 260.101.2, 260.103.4, 260.105.7, 260.105.17, 260.105.33, 260.105.34, 260.211.1, 260.217, 260.230, 260.241.4, 260.242 REPEAL: 260.105.37, 260.204.11	12/09/09 ADOPT: 2025
10/29/09	AMEND: 2699.6809	12/03/09 AMEND: 425.01
10/29/09	AMEND: 2699.6600, 2699.6607, 2699.6619, 2699.6621, 2699.6705, 2699.6715, 2699.6725	10/20/09 AMEND: 2433
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10/15/09	AMEND: 2632.5	09/01/09 AMEND: 2222
10/06/09	ADOPT: 2728, 2773, 2903 AMEND: 2731, 2848, 2930 REPEAL: 2728, 2755	08/24/09 AMEND: 2193
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 12/21/09 AMEND: 670.5  
 12/21/09 AMEND: 2310, 2320  
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 11/30/09 ADOPT: 1022.4, 1022.5, 1024.6 AMEND: 1035.3, 1090.12, 1092.14  
 11/30/09 AMEND: 1052, 1052.1, 1052.4  
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 12/21/09 AMEND: 3287, 3290  
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 10/23/09 ADOPT: 3999.8  
 10/14/09 AMEND: 3045.2  
 10/06/09 AMEND: 3000, 3173.1, 3176, 3176.3, 3315, 3323

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09/22/09	AMEND: 2500, 2502, 2505	2814.31, 2814.32, 2814.33, 2814.34,
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11/19/09	AMEND: 200, 204, 206, 207, 208, 209,	492.10, 492.11, 492.12, 492.13, 492.14,
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10/06/09	ADOPT: 1412.1, 1412.2, 1412.3, 1412.4,	<b>Title 25</b>
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10/21/09	AMEND: 1062, 1064, 1066, 1070	12/22/09 AMEND: 11-425, 22-001, 22-003,
10/06/09	AMEND: 3939.2	22-009, 45-302, 45-303, 45-304,
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09/16/09	ADOPT: 2814.20, 2814.21, 2814.22,	09/22/09 AMEND: 40-107, 42-213, 89-130
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